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UNITED STATES OF AMERICA 20-M-30 (HKS)

vs.

DAVID BURGIN AND RODNEY PIERCE,
Defendants.

Buffalo, New York
February 24, 2020
2:57 p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE H. KENNETH SCHROEDER, JR.
UNITED STATES MAGISTRATE JUDGE

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ALSO PRESENT: Brian Mamizuka, U.S. Probation Office
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Rochester, New York 14614

25 (Proceedings recorded by electronic sound recording,
transcript produced by computer).

1 P R O C E E D I N G S

2 * * *

3 (WHEREUPON, the defendants are present).

4 **THE CLERK:** United States vs. David Burgin and
5 Rodney Pierce, Docket No. 20-M-30, this is the appearance of
6 counsel and detention hearings.

7 Assistant United States Attorneys Timothy Lynch and
8 Laura Higgins appearing on behalf of the Government.

9 Michael Blotnik appearing with David Burgin.

10 Barry Covert appearing with Rodney Pierce.

11 **MAGISTRATE JUDGE SCHROEDER:** Good afternoon.

12 **MR. LYNCH:** Good afternoon, Judge.

13 **MAGISTRATE JUDGE SCHROEDER:** We're here for a
14 detention hearing?

15 **MR. LYNCH:** Yes, Judge.

16 **MAGISTRATE JUDGE SCHROEDER:** Are we ready to
17 proceed?

18 **MR. LYNCH:** The Government's ready, Your Honor.

19 **MR. COVERT:** We are, Your Honor.

20 **MR. BLOTHNIK:** We're ready, Your Honor.

21 **MAGISTRATE JUDGE SCHROEDER:** All right, Mr. Lynch.

22 **MR. LYNCH:** Judge, the defendants are charged in a
23 criminal complaint signed by this Court on February 20th,
24 2020. It alleges in Count 1 that the defendants, David Burgin
25 and Rodney Pierce, conspired to possess with intent to

1 distribute 500 grams or more of cocaine in violation of the
2 federal drug laws.

3 That charge alone triggers the Government's right
4 to a detention hearing because the offense for which the
5 defendants are charged is a -- has a maximum penalty of ten
6 years or more.

7 Here the defendants face a minimum penalty of five
8 years if convicted, and a maximum penalty of 40 years.

9 Count 2 only charges David Burgin, but it similarly
10 triggers that provision that permits the Government to move
11 for a detention hearing.

12 And then Count 3 charges David Burgin with
13 possession of firearms on February 19th, 2020, at 56 Grimes
14 Street in Buffalo, New York. And at that location, Judge, the
15 Government seized two handguns as well as two assault rifles.

16 And I'll go into a little more detail about those,
17 but because the maximum penalty for Count 3 is life and it
18 also involves the possession of a firearm, that also triggers
19 the Government's right to a detention hearing under the law
20 and the Government is moving for detention against both
21 defendants based on their danger to the community as well as
22 their risk of flight.

23 And as the Court is well aware, the Government's
24 burden is by clear and convincing evidence with respect to
25 danger and by a preponderance of the evidence as to risk of

1 flight, and the Government believes that following its
2 detention hearing the Government -- the Government will have
3 satisfied its burden with respect to both positions.

4 Judge, based on the nature of the charges, there
5 also is a presumption under 3142 which says that there are no
6 conditions or combination of conditions which would assure
7 against their danger and their risk of flight, and the
8 Government relies upon that presumption at the outset of this
9 detention hearing.

10 Now, Judge, I've had an opportunity to review the
11 Pretrial Services report here and while the Pretrial Services
12 report recommends for both defendants that they be -- they be
13 released on non-financial bonds, the Government believes that
14 the Probation Department hasn't adequately considered all the
15 factors as this Court must under 3142 because it really
16 doesn't look at the weight of the evidence, nor does it really
17 look at the nature and circumstances of the offense as it
18 relates to danger when there's drug dealing involved.

19 And as the Court is aware, under the law Congress
20 has found that drug dealing offenses do constitute a danger to
21 the community and in this case this level of sophisticated
22 drug dealing that David Burgin has been engaged in for more
23 than a decade, and Rodney Pierce has been a close associate of
24 David Burgin for several years, Judge, we believe that David
25 Burgin and Mr. Pierce pose a great danger to the community

1 based on the amount of drugs that they've been distributing in
2 the City of Buffalo.

3 Now, Judge, the events occurred originally on
4 February 19th, 2020. And I want to talk about first the
5 nature and circumstances of the offense; and this Power Point
6 presentation which I've provided to defense counsel will also
7 address the weight of the evidence against each defendant, and
8 I believe that you will find, Judge, after this presentation
9 that the weight of the evidence or the likelihood of
10 conviction is quite high for both defendants.

11 On February 19th, Judge, an individual was
12 arrested, he agreed to cooperate, and it resulted in
13 communications between the confidential source and Rodney
14 Pierce, which led to them agreeing to deliver one kilo of
15 cocaine to the confidential source.

16 As a result of those communications, Rodney
17 Pierce's vehicle was stopped. And if you see, Judge, on the
18 first page of this Power Point you will see a backpack on the
19 front passenger seat of the vehicle. The -- Rodney Pierce was
20 the only occupant of the vehicle. And within that bag, which
21 also included Rodney Pierce's personal information, there was
22 over a kilo of cocaine.

23 In addition, found within the vehicle was vacuum
24 sealed bags, Judge, which according to law enforcement is
25 regularly used in the distribution of narcotics and, in fact,

1 you can see in the bottom left-hand corner, Judge, the use of
2 a vacuum sealed bag like that which is to contain a partial
3 portion of cocaine that was smaller than a kilo of cocaine. I
4 think the estimates are, Judge, approximately between one and
5 a quarter and one and a half kilos of cocaine.

6 So found in Mr. Pierce's vehicle, it's a vehicle
7 that is rented -- I'm sorry, that is registered to his
8 girlfriend. And so the evidence against Mr. Pierce is quite
9 strong considering that this stop was precipitated by -- by
10 consensual calls and text messages between the confidential
11 source and Rodney Pierce.

12 **MAGISTRATE JUDGE SCHROEDER:** In looking at that
13 exhibit, is the kilo of cocaine that you referenced the one
14 depicted as the yellow rectangular object --

15 **MR. LYNCH:** Correct, Judge.

16 **MAGISTRATE JUDGE SCHROEDER:** -- in the upper right
17 photograph?

18 **MR. LYNCH:** It's in the upper right and the bottom
19 left.

20 **MAGISTRATE JUDGE SCHROEDER:** All right.

21 **MR. LYNCH:** Following the encounter of -- the arrest
22 of Rodney Pierce, law enforcement had previously seen
23 Mr. Pierce enter 56 Grimes and go in and out of the building
24 several times prior to being arrested and prior to delivering
25 the cocaine -- the anticipated delivery of the cocaine to the

1 confidential source.

2 So a state search warrant was obtained for 56
3 Grimes based on not only Mr. Pierce's presence at 56 Grimes,
4 but also the fact that law enforcement had observed David
5 Burgin's vehicle outside that premises and had observed him
6 outside that premises that evening.

7 Based on that a search warrant was obtained first
8 for the lower portion and then the upper portion of the
9 premises where as listed there two handguns were found, Judge,
10 two assault rifles, approximately \$250,000 in United States
11 currency and I think that demonstrates, Judge, the scale and
12 scope at least initially of Mr. Burgin's operation here in the
13 City of Buffalo.

14 2.35 kilos of suspected cocaine, 114 grams of
15 suspected fentanyl, narcotic presses, money counters, vacuum
16 sealers, large containers of cut which are regularly used to
17 dilute cocaine so that you can expand the product and sell
18 more of it in the City of Buffalo actually and make more
19 profit. Packaging materials.

20 In addition, Judge, mail addressed to David Burgin
21 at 79 Brunswick where a search warrant was later executed the
22 next day.

23 Within 56 Grimes, Judge, you can see on this third
24 slide the narcotics press contained on the left-hand side of
25 the screen. What it does is this -- the hydraulics at the

1 bottom of the press, Judge, presses up against the top to
2 compress the cocaine and cut to make an additional kilo of
3 cocaine so you can take an original kilo, add cut, stretch it
4 out and then sell it.

5 Down in the bottom right-hand corner, Judge, is
6 another kilo of suspected cocaine. It's labeled with
7 Lamborghini on it. And then in addition, Judge, in the top
8 right-hand corner was a National Fuel bill addressed to David
9 Burgin at 79 Brunswick, and that was found in the upper
10 portion of 56 Grimes.

11 On the fourth page -- on the fourth slide you'll
12 see that there not only was a large quantity of cut, that's in
13 the top left-hand corner, Judge, those are two Rubbermaid or
14 plastic tubs containing cocaine cut which can be added, again,
15 to already purchased cocaine to stretch out the product.

16 A large quantity of marijuana is contained in the
17 top right-hand photograph. And then there's two pictures,
18 Judge, at the bottom of this slide which demonstrate that the
19 large quantity of currency which has been counted and it's
20 approximately \$250,000.

21 Within a closet in the second floor, Judge,
22 contained within two bags were these assault rifles on the
23 left-hand side of the screen as well as two handguns that are
24 contained on the right-hand side of the screen.

25 At this point, Judge, the Government doesn't have

1 any information regarding where these firearms were obtained,
2 but the Government's not aware of Mr. Burgin having -- or
3 Mr. Pierce having firearms registered to them.

4 The next day, Judge, a search warrant was executed
5 at Burgin's residence at 79 Brunswick. In addition, two
6 additional firearms were seized at the residence, Judge,
7 including this handgun contained on the right-hand side of
8 this display here.

9 But I think really pertinent, Judge, was there was
10 a ledger listing properties owned by Mr. Burgin, including 56
11 Grimes, which -- let me just see, Judge, in the bail report I
12 don't believe Mr. Burgin listed this as an address of his. In
13 fact, the only ones he listed were 73 Rogers and 239
14 Stockbridge.

15 But there were plans for that location within 56
16 Grimes. I believe he had property receipts relating to 56
17 Grimes. But in addition, he also had 73 Rogers listed, which
18 as the Court will find out later there was a significant
19 amount of cocaine, fentanyl and money found at that location.

20 And that's right, Judge, he had a zoning board
21 letter from the Buffalo Zoning Board for 56 Grimes, it was
22 addressed to him at 79 Brunswick.

23 So when you look at the bail report, we're
24 already -- and I think you're really going to question
25 Mr. Burgin's finances once I get through all of my

1 presentation, Judge, but already now we already have a
2 question about whether Mr. Burgin was even honest when he sat
3 down and was interviewed by the U.S. Probation officer about
4 the property that he owns, the money that he has and that's,
5 again, just the beginning.

6 He also had notes in there regarding high end
7 jewelry that he had apparently purchased, as well as debit
8 cards in the name of David Washington, which as the Court is
9 aware David Washington was indicted by a federal grand jury on
10 Thursday afternoon. He is presently charged in a cocaine
11 conspiracy involving 5 kilograms or more of cocaine.

12 And, Judge, I fully expect that Mr. Burgin is going
13 to find himself as well as Mr. Pierce find themselves
14 co-defendants of Mr. Washington in the very near future.

15 On this fifth -- seventh slide, Judge, you'll see
16 that this is a handwritten ledger that was found in
17 Mr. Burgin's residence at 79 Brunswick. It lists several
18 addresses with numbers next to it. The first one being 31
19 Bennett -- BV, which we believe stands for Bennett Village
20 Terrace, Judge, which is a location in the City of Buffalo.

21 69 Bennett Village Terrace, which at least is in
22 the name of Sonya Burgin, the defendant's sister, but it was
23 also the location where David Washington was found, arrested,
24 in possession of 12 cell phones and approximately \$77,000.

25 73 Rogers, 239 Stockbridge, 37 Stephens, 56 Grimes,

1 92 Brunswick which was right down from where Mr. Burgin lived
2 at 79 Brunswick. So, again, Judge, the Government's belief is
3 that the defendant actually has an interest, if not the whole
4 interest in all of these properties, and that if they're in
5 the names of other individuals or other family members, that's
6 simply to hide Mr. Burgin's possession and ownership of those
7 locations.

8 In the picture on the right, Judge, is a rifle that
9 was also found within the residence.

10 And now that takes us to 73 Rogers, Judge, because
11 as I indicated the defendant David Burgin had not only listed
12 this in the Probation report, but he also had records at his
13 residence indicating his ownership in this premises.

14 This premises was searched on February 21st. They
15 found a hydraulic trap in the stairs. There was a front
16 closet with a false wall and a hydraulic trap. There was a
17 money counter, scales, a vacuum sealer, packaging. This is an
18 official count of \$246,775 in United States currency. Two
19 kilos of fentanyl, a kilo of cocaine and a kilo of crack.

20 Again, Judge, this -- now at this point we're at
21 approximately \$500,000 directly linked to Mr. Burgin not only
22 through his -- his ownership of both properties, but also his
23 presence at 56 Grimes just before the warrant was executed by
24 the Erie County Sheriff's Department and Buffalo Police
25 Department.

1 Slide number nine, Judge, gives the Court an idea
2 of the significant amount of drugs seized at the location. On
3 the left-hand side, Judge, you can see the kilo packages in
4 that photograph as well as loose portions of drugs which
5 include what we believe to be approximately one kilo of
6 cocaine.

7 In addition, on the right-hand side is just a
8 significant amount of U.S. currency. And it's my
9 understanding, Judge, to demonstrate how much this is or the
10 quantity in which it is, there was \$4,000 in fives, Judge, and
11 there was approximately \$13,000 in tens.

12 And I would suggest to this Court based on
13 everything that's been presented, Judge, that's indicative of
14 large scale drug dealing even at the small level, which means
15 that users and the like are coming and buying drugs and those
16 fives and tens are being funneled back to Mr. Burgin for
17 payment for drugs and -- Mr. Burgin and Mr. Washington, and
18 they've then been stored at 73 Rogers in the City of Buffalo.

19 The next slide, Judge, gives you an idea about the
20 false wall and the sophisticated nature in which the drugs
21 were -- or the money was hidden from view. And if you can see
22 on the right-hand side, Judge, initially you had to get
23 through that plywood. Once that was removed, Judge, it went
24 into another room whereas you can see, Judge, on the left-hand
25 side there's money stacked from the floor almost to the middle

1 of the wall and then all the way over more United States
2 currency at the top portion of that.

3 Now, on February 21st 69 Bennett Village Terrace
4 was also searched that morning. Again, David Washington was
5 arrested there. Source information that the Government has,
6 Judge, says that Mr. Washington and Mr. Burgin are close
7 associates. They had been for quite a while.

8 12 cell phones were seized from Mr. Washington at
9 that point. The Government's evidence at least prior to the
10 search warrant was that Mr. Washington over the past few years
11 has purchased 18 iPhones, Judge. His reason for using
12 iPhones, we believe, Judge, is because that is what he
13 believes to be the best method to ensure that his
14 conversations aren't intercepted by law enforcement.

15 But also, Judge, I think the Court can take
16 judicial notice that iPhones are quite expensive. I mean, if
17 you're talking 18 iPhones, they're anywhere between 750 and
18 \$1,000. The amount of money being spent on iPhones like that
19 is because they obviously want their business to be secretive,
20 they don't want to get caught, they're consistently flipping
21 their phones in order to avoid law enforcement detection.

22 In addition, in the floorboards of that residence,
23 Judge, there was approximately \$77,000. There was also
24 additional thousands of dollars found within the residence as
25 well as in a rental car that Mr. Washington had rented.

1 There were two expensive rings.

2 There was a floor safe that although didn't have
3 any money, Judge, the Government has source information --

4 **MAGISTRATE JUDGE SCHROEDER:** Wait a minute. You
5 said Mr. Washington?

6 **MR. LYNCH:** Yes. Yeah, Mr. Washington and
7 Mr. Burgin, Judge, are linked not only by 73 Rogers because
8 that's in the name of Mr. Burgin, but we also have witnesses
9 that put Mr. Washington at that location.

10 In addition, Judge, 69 Bennett Village Terrace is
11 owned by Sonya Burgin, David Burgin's sister.

12 In addition, this address 69 Bennett Village
13 Terrace is listed in David Burgin's ledger that was found at
14 79 Brunswick.

15 So, again, now between those three -- those three
16 areas -- the Rogers, Bennett Village Terrace and Grimes, there
17 is more -- more than half -- a half a million dollars has been
18 seized from this organization.

19 But Mr. Burgin's history with law enforcement goes
20 back quite a while. In 2007, Judge, he was named in a federal
21 wiretap. At the time he was, according to source information,
22 moving between 30 to 50 kilograms of cocaine per month.

23 Several members of David Burgin's organization was
24 arrested at that time, including Vinnie Lagrange, Robert
25 Dewitt Stevenson and others.

1 Although Mr. Burgin wasn't arrested at that point,
2 Judge, the IRS did a significant tax investigation of
3 Mr. Burgin and that tax investigation was reinvigorated when
4 my case against Mr. Burgin opened in 2015.

5 And in order for the Court to get an idea of the
6 scope of Mr. Burgin's activities, Judge, I've listed for the
7 tax years that I know about for Mr. Burgin his reported income
8 for the years 2004, 5, 6, '14, '15, '16, '17 and '18. The
9 reported earnings are approximately \$108,827, Judge.

10 Based on his known expenditures -- and that's
11 simply expenditures that can be tied to his bank accounts,
12 credit card records, credit card payments. Those same years,
13 Judge, his total known expenditures -- that's not cash
14 expenditures -- it's over a million dollars.

15 Now, the bail report here, Judge, indicates that
16 Mr. Burgin has been working I guess on and off for a
17 construction company -- on and off the books. He's got no
18 real history of employment. He didn't list any other business
19 other than that construction business.

20 He's really got no verification for the -- even the
21 interest he has in these homes and how he would have purchased
22 them, but obviously this tax investigation gives the Court an
23 idea that where he's been generating his money is through his
24 illegal activities, that being his sale and distribution of
25 cocaine in the City of Buffalo.

1 Now, with respect to Mr. Burgin, too, Judge, in
2 March of 2017 there was a video recording of Mr. Burgin at a
3 hotel room in the City of Buffalo. He met with a confidential
4 source. And the statements made by Mr. Burgin in this --
5 during this meeting are enlightening because they demonstrate
6 not only Mr. Burgin's -- the scope of his organization, but
7 how much money he has available at any time to pay for large
8 quantities of cocaine.

9 And initially in this hotel room the confidential
10 source was talking to Mr. Burgin about the cocaine prices in
11 the City of Buffalo. And David Burgin says, shit, right now
12 we pay 30 and we get it to come here.

13 So what Mr. Burgin is saying, Judge, is that they
14 don't have to go travel down anywhere to get it. And he says,
15 I mean, it's cheaper in other places, you know, but whatever.
16 I ain't trying to be nowhere, shit.

17 The confidential source says they're 25,000 per
18 kilo down in the location where the source is from. David
19 Burgin responds I know -- and he goes on to say, I don't like
20 the road. He doesn't want to have to worry about transporting
21 the cocaine up to Buffalo.

22 And right there at the end, Judge, he says, I mean,
23 shit, I be chilling. I don't try to do much, me and my man --
24 which, Judge, the Government believes is David Washington --
25 like 20 a week. 20 kilograms a week, Judge, some shit like

1 that, call it a day and just be laughing other than that.

2 So this is now even almost three years prior to his
3 arrest on Grimes where he's in possession of a large quantity
4 of drugs and a large quantity of cocaine and four firearms.

5 The source then says if I was able to get 15, how
6 much can you pay upfront? And as the Court's aware, sometimes
7 drugs are sold on consignment. So you might give somebody
8 drugs and then they come back with payment.

9 And Burgin laughs, almost makes it clear, that
10 ain't shit change, it ain't nothing. If you get here with 15,
11 I'm gonna pay for 15. I mean, all I have to know is how to
12 coordinate. Like I said, I have people that comes all the
13 time.

14 So at 20 kilos at -- I'm sorry, 15 kilos at \$30,000
15 apiece is \$450,000, Judge. So, again, it demonstrates the
16 sheer size and scope of David Burgin's organization that has
17 been operating for more than a decade.

18 But there's more, Judge. Not only that, he
19 discusses marijuana. He says he can take faith 500 pounds of
20 marijuana right away. No problem. The only matter is how
21 much the price is and how good the marijuana is.

22 And, Judge, this was -- this was left out of the
23 Pretrial Services report, according to Mr. Burgin, but
24 Mr. Burgin has a -- has a business interest in a collection
25 agency in Jamaica. Now, according to the Pretrial Services

1 report, he indicated he only had gone to Jamaica for pleasure,
2 but as what's clear from this transcript and what's even more
3 clear from the financial records, Judge, Mr. Burgin has been
4 obtaining a large quantity of deposits from Wolfberg & Stein,
5 which is a company that's in Jamaica, anywhere between 50 and
6 \$90,000 in some years, and I believe that that's the money
7 that he's talking about here when he talks to the source and
8 says he has a business in Jamaica.

9 David Burgin says I go to Jamaica and they -- my
10 business partner's over in Jamaica, his name is Mubarack
11 Saeed. Those motherfuckers be thinking I'm going to see a
12 terrorist. Now, he's talking about the Government because he
13 doesn't like to cross the border.

14 And he goes on and he talks about how he deals with
15 them, the headaches he has crossing the border. And then he
16 goes on to say, you know, talking about his businesses, he has
17 to legitimize his money because he wants to get out of the
18 cocaine business at some time. Ain't no -- because you get
19 addicted to this shit. I was like unless you super smart and
20 you set up some legal shit that's gonna bring you in just as
21 much money than you're making now, you're never gonna want to
22 quit this.

23 So he goes right now I'm about to get 70,000 a
24 month completely legal, but he never has had the income to
25 demonstrate that he could even purchase an interest -- a legal

1 interest in a business, let alone one that generates \$70,000 a
2 month in Jamaica.

3 He then goes on and talks about cocaine prices.
4 You can't do more than 30. Man, not really, that's what I'm
5 getting at right now. That -- that's -- that's -- quality's
6 great and just 'cuz we don't drive and get it, my other piece
7 is in Chicago. So he's talking about the fact that David
8 Burgin has a source of supply also in Chicago.

9 And they start talking about how much it would cost
10 to bring cocaine, how much it's per kilo to transport it to
11 Buffalo, approximately \$1,300 per kilo.

12 He then goes on and talks about -- again about his
13 business interests in Jamaica. And he talks about the fact
14 that there's 200 employees at the office in Jamaica where they
15 pay them 90 cents an hour. So labor is cheap over there and
16 then David Burgin says why the hell you think my office is
17 over there? That's why we went over there. That's --
18 that's -- that's what -- I'm mad as hell, I've got to file
19 these fucking taxes, yeah, I got to file taxes for the last
20 two years, yeah.

21 Then he goes on to say my accountant had me --
22 well, you know, you gonna owe about 70,000. And I'm like as
23 long as I don't touch it, he's just letting me know I'm almost
24 done.

25 So again this is not -- this is not listed in the

1 Pretrial Services report. In fact, his -- based on the amount
2 of money that was seized in this case, he hasn't even provided
3 a proper calculation of his assets.

4 So when you have this amount of money at his
5 disposal, Judge, the risk of flight in a case like this, where
6 Mr. Burgin has avoided law enforcement arrest for more than a
7 decade, Judge, the likelihood of him fleeing is extremely
8 high.

9 Although we've seized to date approximately
10 \$750,000, Judge, from Mr. Washington and Mr. Burgin, there's
11 no saying that that's everything, Judge. Certainly there's
12 more money at Mr. Burgin's disposal. This interest in this
13 Jamaican company, Judge, could be cashed out. He could flee
14 to Jamaica where he has apparently business partners.

15 And Mr. Pierce, Judge, has the same connection to
16 Mr. Burgin. He's his nephew. It's apparent to the
17 Government, Judge, that the Burgin family has set up other
18 businesses the Government believes, Judge, are actually funded
19 by David Burgin and it's simply a way for him to clean his
20 money, including David Burgin's sister.

21 And so there's a lot at stake here for them. And
22 if they're convicted and the likelihood of conviction is high,
23 Judge, they're going to spend a great deal of the rest of
24 their life in prison based on the number of kilos of cocaine
25 that Mr. Burgin's been involved in. So that not only

1 demonstrates their danger to the community, but it gives them
2 a strong reason to flee.

3 And then the last page of this exhibit, Judge, just
4 demonstrates that he again talks about his business in
5 Jamaica. He talks about his partners and he notes that one of
6 the partners paid approximately \$180,000 and my other partner
7 owed about \$300. And he says 300,000 and as he said, Uncle
8 Sam gets his money. Well, Uncle Sam got his money on
9 February 20th and 21st from David Burgin, that's for sure.

10 Judge, I went through that -- those -- that
11 evidence, Judge, for the purpose of demonstrating several of
12 the factors that the Court has to consider and weigh when
13 determining whether there are any conditions or combination of
14 conditions which would assure against their flight and their
15 danger to the community.

16 And the first factor is you have to consider nature
17 and circumstances of the offense. Does it involve a
18 controlled substance offense? It does, Judge. The nature and
19 circumstances of the offense are -- are high.

20 The case involves the possession of fentanyl, which
21 the Court knows is one of the most, if not the most dangerous
22 drug that is sold in the United States; it's caused countless
23 number of deaths. And even more overdoses than actually,
24 Judge, have been prevented by the use of Narcan. There could
25 have been more deaths.

1 And individuals who sell these drugs -- and
2 Mr. Burgin's not even a user of drugs -- they do it, Judge,
3 simply to make money and that's what Mr. Burgin has been doing
4 for nearly his whole adult life.

5 And you have to look at the weight of the evidence
6 against the person. And, again, Judge, based on the evidence
7 presented here, based on the information that's in the
8 complaint, the likelihood of conviction is extremely high.

9 Mr. Burgin not only is -- not only does he own 56
10 Grimes, not only was he seen at 56 Grimes, but kilos of
11 cocaine had just come out of there, kilos of cocaine were
12 found in there and firearms were found in there as well as
13 what's -- all the makings of a drug business, Judge: Vacuum
14 sealers, money counters, cut, cocaine press. That's his
15 business office right there.

16 And Mr. Pierce, he's -- he's in deep with
17 Mr. Burgin. He's the one that was sent out to go deliver the
18 drugs. David Burgin is not gonna go deliver the drugs. So
19 who does he have? He has Rodney Pierce go do it, his nephew.

20 And Rodney Pierce, Judge, when you look at his
21 employment history, it's scant, too. He hasn't worked in nine
22 months, he hasn't worked in nine months, Judge, because he's
23 been dealing drugs in the City of Buffalo.

24 You also have to consider the history and
25 characteristics of the person. Their character, Judge. Well,

1 based on the evidence presented here, Judge, they're both drug
2 dealers. So the character of the two I don't think really
3 should be given much -- shouldn't be -- there's not much
4 positive character traits by either defendant.

5 Do they have family ties? Of course they have
6 family ties in this area, Judge. They've lived their whole
7 life here. But that factor alone doesn't outweigh the
8 dangerousness of these defendants, the sheer scope of their
9 drug dealing.

10 And I know that Mr. -- defense counsel submitted
11 letters to me prior to it, but, Judge, I mean, these people
12 wrote these letters. I doubt they know what the scope of the
13 defendants' involvement in cocaine trafficking is and, quite
14 frankly, it paints a different -- what the Government has
15 presented here today, paints a completely different picture
16 than what I'm sure they may know about or they would be
17 willing to say.

18 And to the extent that they know about Mr. Burgin's
19 activities, Judge, these letters aren't worth the paper that
20 they're printed on then because they're simply trying to get
21 this Court to release Mr. Burgin when, in fact, the
22 likelihood of him re-offending, the likelihood of him coming
23 back is just -- or not coming back is extremely high.

24 You have to look at their past conduct. Now, I
25 know each one of them doesn't have much of a criminal history,

1 Judge. But when you look at Mr. Burgin's past conduct, you
2 know, the -- not only did the IRS information tell a story,
3 Judge, about his financial situation, but the video
4 recorded -- video recorded meeting with the source in March of
5 2017 demonstrates that Mr. Burgin just unequivocally has been
6 involved in major cocaine trafficking for a significant period
7 of time.

8 The -- the snippets I put on there, Judge, are
9 simply just photo stills from that video. It's clear it's
10 Mr. Burgin. It's in high definition. And it goes on for a
11 lengthy period of time. I only took a couple of snippets.
12 The video is so long it had to be broken up into nine parts.

13 So Mr. Burgin is not going to be able to walk away
14 from those statements. Those statements are highly
15 incriminating. They demonstrate that, again, he has been the
16 head of a significant cocaine organization operating in the
17 City of Buffalo for a very, very, very long period of time.

18 It's just now that the Government was able to, we
19 believe, obtain sufficient evidence tieing him to 56 Grimes as
20 well as the cocaine and the money that was seized there that
21 he was charged.

22 The other factor you have to consider, Judge, is
23 the nature and seriousness of the danger to any person that
24 the defendant poses. And, again, both of these defendants
25 pose a serious danger to the community based on their

1 involvement in the offense charged. The seriousness of the
2 drugs that are being sold.

3 And when you consider all the factors, Judge, and
4 -- and Probation, I point out, Judge, they haven't considered
5 all the factors like the Court has to, like the Government has
6 to, including the weight of the evidence, the nature of the
7 dangerousness that's posed by Mr. Burgin and Mr. Pierce to
8 this community.

9 And while I appreciate their efforts here, Judge,
10 they're always doing their best, the information that's
11 provided is only as good as what the defendant told them. And
12 it's clear, Judge, Mr. Burgin didn't tell them much of
13 anything.

14 And, you know, the business interests in Jamaica
15 is -- is just the beginning. Mr. Burgin has traveled
16 extensively. He's been to Houston, he's been to Atlanta, he's
17 got connections to a jewelry store in Charlotte.

18 So the sheer scope of the money he's been making,
19 the amount of drugs that he's been selling, Judge, I think the
20 Government has demonstrated by clear and convincing evidence
21 that he -- both defendants pose a danger to the community, but
22 also by a preponderance of the evidence that both defendants
23 pose a risk of flight, Judge, and we would ask that both David
24 Burgin and Rodney Pierce be detained pending indictment and
25 trial in this case.

1 **MR. COVERT:** Which defendant would you like to have
2 proceed first?

3 **MAGISTRATE JUDGE SCHROEDER:** I realize that
4 Mr. Lynch made a fairly lengthy presentation. I'm going to
5 give each defense counsel ten minutes to at least confer with
6 their clients, we'll recess until quarter to.

7 **MR. COVERT:** Very good. Thank you, Your Honor.

8 (**WHEREUPON**, there was a pause in the proceeding.)

9 **THE CLERK:** Back on the record.

10 **MAGISTRATE JUDGE SCHROEDER:** Mr. Covert, Mr.
11 Blotnik, did you have an opportunity to confer with your
12 clients?

13 **MR. COVERT:** We certainly did, Your Honor. Thank
14 you.

15 **MAGISTRATE JUDGE SCHROEDER:** All right.

16 **MR. COVERT:** I think Mr. Blotnik is going to proceed
17 at this point.

18 **MAGISTRATE JUDGE SCHROEDER:** All right. Just so
19 you're close to a microphone, yes.

20 **MR. BLOTHNIK:** Good afternoon, Your Honor. I've
21 listened to Mr. Lynch, spent approximately an hour of the
22 Court's time today in an effort to basically try the
23 defendants' case before we even start.

24 It has always been my understanding that the
25 purpose of bail was merely to assure the presence of the

1 defendant at each and every proceeding of the upcoming trial,
2 if there be one, and to be here for each and every court
3 appearance.

4 I submit, Your Honor, that the Probation Department
5 is experienced in asking the proper questions and obtaining
6 the proper information so that they can make a proper and
7 legitimate recommendation to the Court as to whether or not a
8 defendant should be released on bail or released on -- on bail
9 with various conditions as was recommended for my client
10 Mr. Burgin.

11 It was only a couple days ago, Your Honor, there
12 was a big article in the newspaper, which I'm sure that the
13 U.S. Attorney's Office provided information, where they
14 attributed all of these drugs and money to Mr. Washington.

15 Mr. Lynch is here today trying to attribute the
16 same drugs and the same monies that they recovered and now
17 he's saying that they are actually belonging to Mr. Burgin.

18 Mr. Burgin was found without -- was never found in
19 possession of any of the contraband that the Government
20 alleges belongs to him. He was not found inside any of these
21 properties. The firearms that they're speaking of were never
22 seen in his possession.

23 The only firearm, Your Honor, that is in the
24 property he occupies, the weapon that was found at 79
25 Brunswick is a legal weapon which is owned by one of his

1 sisters who has a permit for same. That home is the family
2 home of the Burgin family. That's where Mr. Burgin was raised
3 and it's still occupied by several members of the family who
4 use it from time to time.

5 It's my understanding that Mr. Burgin's sister,
6 Erica Copeland, still occupies that house and uses it as her
7 mailing address and left her weapon, which is -- for which she
8 has a permit -- in the residence.

9 It's my understanding that nothing else was found
10 in the residence, Your Honor, that could be attributed to my
11 client.

12 The other properties that Mr. Lynch mentioned,
13 namely, 73 Rogers is owned by my client, but is not occupied
14 by my client and he was not seen at that property at any time.
15 In fact, the newspaper article attributes everything that was
16 found therein -- a large amount of cash and drugs -- to Mr.
17 Washington. As far as I know, Mr. Washington is not charged
18 in this complaint as a co-defendant.

19 As far as the 69 Bennett Village address, which was
20 occupied by -- as Mr. Lynch indicates, stated himself today
21 was occupied by Mr. Washington, and all of the contraband that
22 was found therein I'm assuming would belong to Mr. Washington,
23 not Mr. Burgin.

24 As far as Mr. Burgin's income, Your Honor,
25 Mr. Burgin had numerous years where he earned a significant

1 amount of income and saved a lot of his money. It's
2 convenient that the Government skipped all the years where he
3 made a lot of money are not included in their list of income.
4 They take all the years when he filed smaller amounts, but
5 during the years of -- just one second.

6 In the years of '07 and 2013, he owned a collection
7 agency where he earned a significant amount of money and paid
8 significant amount of taxes. And this is a distorted picture
9 of his income and the payments that he made to the Government.

10 **MAGISTRATE JUDGE SCHROEDER:** Is that the collection
11 agency that was referenced as being in Jamaica?

12 **MR. BLOTHNIK:** No, Your Honor. There's another
13 collection agency that operated in the City of Buffalo.

14 Mr. Lynch indicated that Mr. Burgin was arrested
15 on -- at the property on Grimes Street, which is incorrect.
16 He was arrested in his vehicle. He was seen in -- in his
17 vehicle on Grimes Street, but he was never seen and never
18 arrested at the property that Mr. Lynch indicates.

19 **MAGISTRATE JUDGE SCHROEDER:** My recollection is he
20 said Mr. Burgin was arrested while driving the vehicle and
21 that when removed from the vehicle and a search of the vehicle
22 made, certain things were found as depicted in the photograph.

23 **MR. BLOTHNIK:** Not in Mr. Burgin's vehicle. What's
24 depicted in the photographs, Your Honor, is what was found in
25 Mr. Pierce's vehicle.

1 **MAGISTRATE JUDGE SCHROEDER:** All right.

2 **MR. BLOTHNIK:** There was nothing found in
3 Mr. Burgin's vehicle other than his personal belongings.

4 Your Honor, Mr. Burgin is a life-long resident of
5 this area. He has a large family, they all live here, most of
6 them are in the courtroom.

7 I submitted numerous letters, character letters
8 from various people that Mr. Burgin is acquainted with: Two
9 ministers, two medical people and friends and relatives, all
10 of whom think very highly of Mr. Burgin.

11 He's very active in the community. He would have
12 no reason to flee. And as I stated at the outset, Your Honor,
13 it is the purpose of this hearing to ascertain whether or not
14 Mr. Burgin is a danger to the community or is a flight risk,
15 and I submit that neither one of those applies to Mr. Burgin.

16 Mr. Burgin has never been arrested for any violent
17 crime or should say never convicted of one. And the only
18 thing -- and he travels -- for a person his age has traveled
19 is not that extensive. He's been to Panama and Jamaica is the
20 only countries he's ever been to.

21 I submit, Your Honor, that we would be in a -- we
22 would voluntarily surrender his passports to assure the Court
23 that he would not travel anywhere.

24 We would consent to the conditions recommended by
25 the Probation Department, namely, that he be released to 30

1 Red Oak in Williamsville and abide by the house detention
2 conditions that are recommended.

3 Thank you, Your Honor.

4 **MAGISTRATE JUDGE SCHROEDER:** You made reference to
5 some lucrative years that Mr. Burgin had in running a
6 collection agency located here in the Western District of
7 New York or in Buffalo. Can you give me an approximation as
8 to what the receipts of those years were?

9 **MR. BLOTHNIK:** Can I have just one minute?

10 **MAGISTRATE JUDGE SCHROEDER:** Yes.

11 **MR. BLOTHNIK:** Your Honor, Mr. Burgin doesn't recall
12 specifically, but he recalls at least one year he earned in
13 excess of \$300,000 for which he filed taxes and paid the
14 taxes.

15 **MAGISTRATE JUDGE SCHROEDER:** The reason I ask the
16 question, I asked the question for a couple reasons, but the
17 Government has proffered and represented that during the years
18 in question that is depicted in the Power Point, that the
19 total expenditures apparently reported by Mr. Burgin -- or
20 allegedly reported exceeded a million dollars.

21 And the total receipts reported were in the area
22 total of 100 plus thousand dollars.

23 **MR. LYNCH:** Yeah, 108.

24 **MR. BLOTHNIK:** Judge, they skipped eight years in
25 between.

1 **MAGISTRATE JUDGE SCHROEDER:** I know, I'm just trying
2 to create a more clear in my mind financial picture.

3 And the second part, the reason for the question
4 would be if I were to determine that Mr. Burgin should be
5 released, setting perhaps a financial figure of bail.

6 **MR. BLOTHNIK:** I understand. Your Honor, one
7 additional fact that I think I overlooked is the properties in
8 question that Mr. Burgin owns are -- have been in his
9 ownership since the '90's. He has not purchased anything
10 since 2000.

11 **MAGISTRATE JUDGE SCHROEDER:** What properties are
12 those?

13 **MR. BLOTHNIK:** All the ones that he owns.

14 **MAGISTRATE JUDGE SCHROEDER:** I know. I'm asking,
15 which ones are they?

16 **MR. BLOTHNIK:** The ones that are listed on the --

17 **MAGISTRATE JUDGE SCHROEDER:** Pretrial Services
18 report?

19 **MR. BLOTHNIK:** 239 Stockbridge and 73 Rogers Street.
20 The property where he resides at 79 Brunswick is owned by his
21 parents. And the other properties mentioned are owned by
22 other family members.

23 **MAGISTRATE JUDGE SCHROEDER:** 56 Grimes? The
24 Government had referenced that as being --

25 **MR. BLOTHNIK:** He does not own 56 Grimes.

1 **MAGISTRATE JUDGE SCHROEDER:** -- his and -- and there
2 being some application pending or involved with the City of
3 Buffalo regarding that property by Mr. Burgin.

4 **MR. BLOTNIK:** He does not own that property.

5 **MAGISTRATE JUDGE SCHROEDER:** Does he have any
6 interest in it?

7 **MR. BLOTNIK:** Pardon me?

8 **MAGISTRATE JUDGE SCHROEDER:** Does he have any
9 interest in it?

10 **MR. BLOTNIK:** All I know, Your Honor, is he does not
11 own it. He does not have any interest --

12 **MAGISTRATE JUDGE SCHROEDER:** Is there some sort of
13 application pending by him or on his behalf regarding that
14 property?

15 **MR. BLOTNIK:** He does a lot of renovation work and
16 he may have applied for a permit to do some renovation work in
17 that house, but he does not own it, Your Honor.

18 **MAGISTRATE JUDGE SCHROEDER:** All right.

19 Mr. Covert.

20 **MR. COVERT:** Thank you, Your Honor.

21 Your Honor, I share in some of Mr. Blotnik's
22 comments in relation to the Government's presentation here.

23 I know that the Government has -- feels it has a
24 little bit of a burden to overcome here because the Probation,
25 Pretrial Services recommended the release of both

1 Mr. Blotnik's client and my client, but not having -- I don't
2 feel a need to defend the Pretrial Services, but I think that
3 they know exactly what the charges were here and I know this
4 presentation was very good, very well-done, very well thought
5 out with photographs and everything, but I don't think anyone
6 here -- the Court, ourselves or Probation -- saw anything that
7 we didn't imagine we would see in relation to any
8 investigation into a drug distribution allegation.

9 We saw exactly packages of drugs and houses and
10 where they're located and scales, that's just the normal. I
11 know that the Government feels the need to sort of bring it
12 home to the Court to try to make it look as though Ms. Linton
13 here didn't know what she was talking about when she made this
14 recommendation, but I totally disagree with that. I think
15 that she knew exactly what she was looking at, she knew
16 exactly what this case would hold.

17 While my client is not charged with being in
18 possession of a drug premises Count 2, or being in possession
19 of any weapons, I'm sure that when those allegations were
20 brought in the complaint and Pretrial Services saw those
21 allegations, they're not surprised to then find out that
22 there's photographs of weapons. You know, that's exactly what
23 they would have anticipated, that's what we all anticipate.

24 I know that the Government here needs -- feels the
25 need to sort of change the game and reverse the table on this

1 because there's a recommendation that they're not happy with,
2 but it really does not in any way benefit us to look at the
3 photographs and -- and believe that it's something that we
4 didn't anticipate we would see when we saw these -- the
5 presentation that the Government made.

6 The -- the -- and as Mr. Blotnik indicated, we
7 don't even have access to the evidence, we don't know what the
8 additional evidence is that they have, investigation --
9 whether there's any *Brady* material.

10 My client is 32 years old. He has no criminal
11 record whatsoever. He is a -- by all accounts, we provided
12 letters to the Court, he is a very loving son to his mother,
13 he is a very loving father to his fiance -- to his three
14 children, he loves his fiance.

15 The family is very supportive of him. He has a
16 very strong family network that can make sure that if the
17 Court does release him, that there will be no instance of any
18 misconduct on his part and I really don't believe there would
19 be any.

20 We also have members of the community here: His
21 friends, members of his church who are all here in support of
22 him. And I really almost take offense at one of Mr. Lynch's
23 comments where he said that if the people that wrote these
24 letters knew what he was alleged to have done, then the
25 letters aren't worth the paper that they're written on.

1 That is very offensive. These are people who've
2 just found out these allegations, nothing's been proven.
3 There have been no findings against either of the defendants.
4 And there has been no conviction of anything. They're only
5 allegations of people that they love, including my client,
6 that is -- that is their either family member, friend or
7 fellow parishioner at their church, at the First Baptist
8 Church.

9 And for the Government to say and offend these
10 people and say that they -- if they knew what they were being
11 alleged to have done, that -- and they wrote the letter
12 nevertheless, that somehow that diminishes the individuals who
13 wrote the letters and can attest to his character is -- I
14 think that's beneath the comments that should be made in a
15 proceeding like this.

16 My client by all accounts, by these letters and --
17 I'll be honest with the Court, I just met him today, met with
18 his family members today, received these letters. He seems to
19 be the person that they say he is.

20 By all accounts he is a wonderful young man who is
21 charged for the first time with these types of allegations.
22 He does have driving related offenses in relation to alcohol,
23 but nothing along these lines.

24 He, as I said, has no prior record. He's not
25 alleged to be in possession of the drug premises at 56 Grimes

1 Street. He is not alleged to have been in possession of any
2 weapons in relation to these charges. He's not -- there's
3 nothing that the Government has said that I'm aware of -- and
4 if I'm incorrect, I'll stand corrected -- but I don't believe
5 that Mr. Lynch has in any way tied my client to 69 Bennett
6 Village Terrace or the premises at 79 Brunswick, that there's
7 any indication that there's allegations that he was seen at
8 either of these premises, that he possessed them, that he
9 controlled those premises.

10 There's no allegation that he was ever in
11 possession of any weapons in relation to these offenses
12 whatsoever. There are no allegations of any violence
13 whatsoever here that I'm aware of reading through the papers
14 that we've been provided and been filed with the Court.

15 There's no allegation that my client ever lived
16 beyond his means. The Government, as I understand it, does
17 not dispute that my client lived with his mother, but his
18 fiance lives in a different location with their three
19 children.

20 That he is a stay at home dad. That she's the
21 one -- the fiance is the one who works, he's the one that goes
22 and takes care of the children. He provides for them, he
23 takes them to and from school, he does all the things that a
24 traditional stay at home dad would do and he does so in a very
25 good fashion as indicated by the letters that we have set

1 forth.

2 He was a very good student athlete. He was playing
3 professional basketball in Spain. He was drafted by I believe
4 Arizona? Basketball team. And he -- when he was in Spain
5 about seven or eight years ago, he had -- he had an emergency
6 condition, and he was brought back to the United States.

7 It turns out that his body does not make enough
8 salt and that he has a low sodium issue and that also plays
9 into the arguments before this Court because he has to take a
10 lot -- eat a lot of sodium throughout the day because his body
11 does not generate enough.

12 And at the Niagara County Jail where he's been
13 housed they have been trying to assist him with that, but it
14 has not been sufficient their measures, there's not enough
15 they've been providing to him.

16 And, for example, his blood pressure yesterday was
17 approximately 156 over 120, which is an extremely dangerous
18 range to be at. So that -- that is another reason that we
19 would offer to the Court to allow him to be released.

20 But given the support that he has, the network that
21 he has among his family members, friends, his church, the
22 members of the community who are well aware of why he's
23 charged, the courtroom is full of these people, they're not
24 here because they think that he hasn't been charged with a
25 serious offense. They know exactly what he's charged with,

1 but they love him, they support him, they will provide for him
2 if the Court is generous enough to allow him to be released.

3 And so I think that given the circumstances that
4 the Court is asked to look at and the nature of the offense,
5 and there is no violence alleged here, there's no allegation
6 that my client was in possession of any weapons.

7 You know, Mr. Lynch said the history and character
8 of the defendants and all he could point to was the current
9 charges. No other history. That's -- it's given that the
10 person that is before the Court is charged with the current
11 offense.

12 Is there a history of prior offenses? There's none
13 whatsoever. There's no history of violence, no history of
14 possession of weapons, no histories of threats to other
15 individuals.

16 And, you know, the Court will provide that as a
17 condition that he not engage in illegal activity, which would
18 include in drug dealing. So he's no danger to the community
19 by releasing him because he's not going to do anything wrong.

20 And if he does, I've been before this Court , I
21 know exactly what the Court will do, I already told my client
22 what the Court will do if he violates to the smallest degree
23 any order of this Court, he will be incarcerated quickly by
24 the Court.

25 His family ties, he's from Buffalo, grew up in

1 Buffalo. Other than leaving when he was playing in Spain and
2 he came back, that's the only time that he has left the
3 country is my understanding.

4 He has three children here. He has his family
5 here, his friends, his church members, his ties are only to
6 Buffalo. He's not going anywhere. There's no threat of him
7 leaving.

8 And as I -- again, he is no danger to the community
9 if the Court releases him. So I would very respectfully ask
10 that the Court abide by the recommendation of
11 Pretrial Services.

12 **MAGISTRATE JUDGE SCHROEDER:** It's been indicated in
13 the Pretrial Services report, I believe, that the defendant
14 had indicated to the probation officer that his family may be
15 of assistance in raising security for bail.

16 **MR. COVERT:** Yes, they will do whatever the Court
17 likes. I don't know. I really apologize, I just got brought
18 into the case. I don't know what assets they do have, but I
19 think that they would sign any bonds if the Court would want
20 to set -- set a signature bond amount or assist in any way
21 that they could.

22 **MAGISTRATE JUDGE SCHROEDER:** And he lives with his
23 mother?

24 **MR. COVERT:** He does. And his mother does legally
25 have handguns which she will immediately hand over to someone

1 who is licensed to take the handguns so that they are out of
2 the house.

3 **MAGISTRATE JUDGE SCHROEDER:** I think also there was
4 a reference made to -- or maybe it was Mr. Burgin's sister who
5 had a weapon or a rifle. All right.

6 **MR. COVERT:** I think that was Mr. Burgin, Your
7 Honor, I believe.

8 **MAGISTRATE JUDGE SCHROEDER:** All right.

9 Mr. Lynch, in your proffer you made representations
10 as to an Internal Revenue Service investigation, and I think
11 you indicated it started or at least occurred back at around
12 2007?

13 **MR. LYNCH:** Correct, Judge.

14 **MAGISTRATE JUDGE SCHROEDER:** Was there ever any
15 action taken either civilly or criminally by IRS?

16 **MR. LYNCH:** I know criminally not, Judge. Not
17 civilly either.

18 **MR. COVERT:** Your Honor, if I can? I don't want to
19 divert the Court. One more point that I left out, which is I
20 know it's as to Mr. Burgin, but the videotape that the
21 Government presented as to Mr. Burgin where these comments
22 were made by him that were allegedly in relation to drug
23 dealing was March of 2017.

24 If these gentlemen were such a danger to the
25 community, then why are we here in February of 2020? Why

1 weren't they picked up long ago if they're such a danger to
2 the community? Because the Government had that videotape back
3 in March. They were clearly conducting an investigation, had
4 a confidential informant. So it couldn't have been that big
5 of an emergency that we wait, what? Two and a half years.

6 **MAGISTRATE JUDGE SCHROEDER:** Anything you want to
7 add, Mr. Lynch?

8 **MR. LYNCH:** Judge, I'll rely on the presentation I
9 already made.

10 A couple things. I don't think the defendants have
11 rebutted the presumption standing alone, but in light of the
12 Government's evidence, Judge, I don't think they've -- I think
13 the Government has still maintained its burden with respect to
14 both risk of flight and danger.

15 I -- with respect to Mr. Burgin, Judge, he clearly
16 has connections to firearms, but I do want to address
17 Mr. Covert's point about the danger -- that his client doesn't
18 pose a danger.

19 Well, that's -- Congress found under the Bail
20 Reform Act that drug dealing does pose a danger to the
21 community. In fact, Congress found that there was a
22 presumption that applies in cases involving simply drug
23 dealing. There are presumptions that also apply in gun
24 possession cases.

25 So to say that he doesn't pose a danger I think

1 minimizes what drug dealing does to our community, especially
2 at this scale that Mr. Burgin and Mr. Pierce have been
3 engaging in.

4 The final thing that I want to say is, Judge, both
5 of them have indicated they have family ties, but those family
6 ties, Judge, haven't stopped Mr. Burgin or Mr. Pierce from
7 engaging in criminal activity prior to now.

8 So to think that those family ties will stop them
9 going forward, I don't think should assure the Court that
10 that's, in fact, going to happen.

11 Just the final thing I want to point out, Judge, is
12 Mr. -- it's clear from Mr. Burgin's interview with
13 Pretrial Services that he wasn't completely honest regarding
14 his finances at all based on the information that's been
15 presented to the Court.

16 It simply demonstrates that Mr. Burgin has been
17 involved in drug dealing for more than a decade. He has
18 reaped the benefits of that drug dealing by virtue of his
19 spending, by virtue of purchasing certain properties and
20 demonstrated by the sheer money that was found inside the
21 residences that are, in fact, either owned by Mr. Burgin or he
22 apparently has a great interest in.

23 In fact, he had keys to 56 Grimes, so he's got an
24 interest in 56 Grimes. They opened up 56 Grimes with his key.
25 So, you know, I think the fact whose name it is, you know, I

1 don't think that really tells us much. I think possession of
2 it is very important.

3 And Mr. Burgin, based on the zoning board records,
4 based on his observations of him being outside 56 Grimes on
5 February 19th, as well as the other information that the
6 Government's proffered, we would ask that both defendants be
7 detained.

8 **MAGISTRATE JUDGE SCHROEDER:** In considering the
9 Government's motion to have each of the defendants detained,
10 it is my obligation to take into account all of the
11 information made known to the Court and consider all of the
12 facts and circumstances as made known in their totality.

13 And as part of that process the Government has also
14 put forth its reliance on the presumption created by Congress
15 in the Bail Reform Act of 1984 as amended.

16 And that is the presumption of dangerousness by
17 reason of the charges against the defendants herein, namely,
18 alleged drug transactions, drug dealing, drug distribution,
19 conspiracy to violate the drug laws. However, I point out
20 that that presumption is a rebuttable presumption.

21 There is also another presumption that the Court
22 must take into consideration and that is a constitutional
23 presumption and that is the presumption of innocence to which
24 each defendant is entitled. And that same presumption is also
25 iterated in the Bail Reform Act of 1984 as well.

1 So we are basically dealing with two presumptions:
2 The one relied on by the Government in the Bail Reform Act,
3 which is the statutory presumption; and the one to which each
4 defendant is automatically entitled to under the Constitution
5 of the United States.

6 And when I weigh the presumptions -- a
7 constitutional presumption against a statutory presumption --
8 it is my opinion both legally and justiciable that the
9 constitutional presumption is a much weightier, a much more
10 impressive presumption.

11 The presentation and the proffer put forth by the
12 Government is a substantial one, at least as to what has been
13 alleged to as having been recovered in the recent searches
14 conducted pursuant to search warrants and disclosures obtained
15 by way of apparently either Title III orders or other types of
16 investigatory tools.

17 But, once again, we still have the presumption of
18 innocence to which each defendant is entitled and that
19 presumption remains with each defendant until such time as
20 they are found guilty beyond a reasonable doubt after a trial
21 based on legally competent evidence.

22 I do have concern as to the foundation which the
23 Government is relying on to support its motion in addition to
24 the presumption and that is the so-called history that was
25 proffered. And what causes my concern was briefly addressed

1 by defense counsel and it's something that I find in a number
2 of cases that come before this Court, but most specifically
3 and particularly in drug cases and child pornography cases,
4 and that is the claim by the Government that the defendant
5 charged constitutes a danger and must be detained, but yet
6 more often than not the Government is aware of the activity
7 for long periods of time before it takes any action, which
8 causes me intellectual honesty concerns.

9 That if the Government is aware of somebody
10 conducting activity that it says is now dangerous which
11 warrants immediate removal of that person's freedom, why
12 wasn't that done as defense counsel indicated when it first
13 became known?

14 In this particular case the proffer indicates that
15 the investigations with respect to each defendant are of a
16 number of years duration, and during that number of years the
17 defendants apparently were at liberty and were going on about
18 whatever they were going on about.

19 So that so-called pressure of immediate action
20 really isn't there when you consider it in that context of
21 this activity allegedly having occurred over a lengthy period
22 of time.

23 Also the Government makes reference to IRS
24 investigations, large volumes of cash, but yet as the
25 Government has now acknowledged, no IRS action was ever taken

1 against the defendants, especially Burgin, either civilly for
2 taxes -- for collection of taxes or criminally for fraudulent
3 tax violations.

4 And so, quite frankly, the Government's inaction as
5 to these so-called serious events causes me to conclude that
6 the presumption really has been rebutted by the Government's
7 own inaction.

8 If the defendants were so dangerous, the Government
9 should have taken action. If the defendant Burgin was so
10 violative of the tax laws, IRS and the Government should have
11 prosecuted or at least civilly undertaken steps to collect
12 those tax dollars. Neither of which occurred.

13 And so I say to myself how can I intellectually say
14 then these defendants are such a danger or are such habitants
15 of illegal conduct that there are no terms and conditions that
16 I could reasonably impose to assure the safety of the
17 community or to uphold the principles of the Constitution,
18 especially the principle of presumption of innocence.

19 Bail is not meant to be a punitive tool. Bail is a
20 constitutional right to what every defendant charged with a
21 crime is entitled to be considered for .

22 I also take into account the Pretrial Services
23 report as to each defendant and the experience of each of the
24 probation officers preparing those reports.

25 Both defendants appear to have no criminal records

1 of any substance. There are convictions for DUI or DWI by the
2 defendant Pierce back in 2013 and 2019, but other than that he
3 has no reported criminal convictions.

4 As to the defendant Burgin, the Pretrial Services
5 report shows no criminal convictions of any nature.

6 This Court has had a number of drug cases involving
7 defendants with substantial criminal records where the
8 Government has had no objection to their release.

9 And so when I consider, once again, the
10 circumstances and the facts made known in this case in their
11 totality, coupled with the presumption of innocence, I've
12 heard nothing that really indicates to me even by a scintilla
13 of evidence as to the risk of flight because there are steps I
14 can take to minimize any risk of flight.

15 Once again, as to dangerousness to the community,
16 that burden is one of clear and convincing evidence and
17 apparently the Government didn't think there was clear and
18 convincing evidence of dangerousness when it became aware of
19 the alleged conduct that it says is now dangerous back in
20 2017, 2018, 2019.

21 So having said all of that, having evaluated all of
22 that and having considered all of that in its totality, I find
23 that there are terms and conditions that I can impose that
24 will reasonably assure the appearance of each defendant at any
25 future proceedings and that will reasonably assure the safety

1 of the community.

2 And, therefore, I am releasing the defendant David
3 Burgin under the following terms and conditions:

4 The defendant will be required to post security in
5 the amount of \$100,000 cash or property having equal value of
6 that free and clear of any liens or incumbrances.

7 The defendant's travel is hereby restricted to the
8 Western District of New York.

9 The defendant will surrender any and all passports,
10 enhanced driver's licenses or any other form of documentation
11 that would enable him to travel internationally.

12 And while this matter is pending, the defendant is
13 not to attempt to renew any passports, enhanced driver's
14 licenses or any other form of international travel document,
15 and he is not to apply for any new passports, enhanced
16 driver's licenses, or any other form of document that would
17 permit international travel.

18 The defendant is hereby required to refrain from
19 excessive use of alcohol.

20 The defendant is not to have in his possession and
21 he is not to use any narcotic drug or substance, even if it's
22 considered legal under the laws of the United States, unless
23 that legal drug or substance is in the form of medicine that
24 has been duly prescribed for him personally by a duly licensed
25 physician to treat him personally for a medical condition.

1 So even though it might be considered a legal drug
2 or substance under the laws of the United States, if it's not
3 in the form of medicine prescribed for you personally to treat
4 you for a medical condition, you are not to have it in your
5 possession and you are not to use it, Mr. Burgin.

6 Do you understand?

7 **DEFENDANT BURGIN:** Yes, yes, sir.

8 **MAGISTRATE JUDGE SCHROEDER:** Needless to say, but
9 nevertheless necessary to say, you are not to have in your
10 possession and you are not to use any illegal drug or
11 substance.

12 You will also be required to submit to drug and/or
13 alcohol testing as determined and directed by the
14 U.S. Probation Office, and you will be required to contribute
15 towards the cost of that service in the form of a co-payment,
16 the amount of which will be determined and directed by the
17 U.S. Probation Office.

18 You're also prohibited from obstructing or
19 attempting to obstruct or tamper with in any fashion the
20 efficiency or accuracy of any prohibited substance testing
21 carried out.

22 You will be required to remain at a verifiable
23 address as approved by Pretrial Services and you will be
24 subject to electronic monitoring on home incarceration, which
25 means you will not be allowed to leave the residence unless

1 you have received permission from the U.S. Probation Office to
2 do so for purposes of either seeking medical attention or some
3 emergency situation.

4 And you will be required to contribute towards the
5 cost of that electronic monitoring in the form of a
6 co-payment, the amount of which will be determined by the
7 U.S. Probation Office.

8 You are to avoid all contact with the co-defendant
9 in this case as well as any other defendants in related cases,
10 such as we've heard Mr. David Washington and the co-defendants
11 listed in the indictment in which Mr. Washington is charged.

12 If there is need for contact or any type of
13 information gathering or investigation to be carried out, you
14 must do that through your attorney Mr. Blotnik, and
15 Mr. Blotnik will explain that to you. There's to be no
16 contact directly or indirectly by you with any of the
17 defendants in the Washington case or with the co-defendant
18 Pierce.

19 You are hereby made subject to the supervision and
20 authority of the United States Probation Office. And what
21 that means is you must carry out and follow through and obey
22 every reasonable directive given to you by a representative of
23 that office.

24 Should you fail to do that or should you fail to
25 comply with any of the terms and conditions that I have just

1 imposed, that can result in your bail being revoked and you're
2 being locked up and kept locked up until this matter is
3 completed.

4 Do you understand?

5 **DEFENDANT BURGIN:** Yes, Your Honor.

6 **MAGISTRATE JUDGE SCHROEDER:** It's also my
7 understanding that there may be some active Orders of
8 Protection that have been issued by state courts of the State
9 of New York.

10 If that is the case, you are also obligated to
11 abide by and obey all of those orders and the terms and
12 conditions set forth in those orders. And should you fail to
13 do that that, too, can be considered a violation of the terms
14 and conditions of this bail and that can result in this bail
15 being revoked and you're being locked up and kept locked up
16 until this matter is completed.

17 Do you understand?

18 **DEFENDANT BURGIN:** Yes, Your Honor.

19 **MAGISTRATE JUDGE SCHROEDER:** Upon the posting of the
20 \$100,000 security as well as a determination by the
21 U.S. Probation Office as to the feasibility for electronic
22 monitoring in the designated approved residence of the
23 defendant, the defendant David Burgin is released subject to
24 the terms and conditions as I've stated them to be.

25 **MR. LYNCH:** Judge, the Government would ask for a

1 one week stay to perfect an appeal to Judge Arcara regarding
2 Mr. Burgin's release conditions.

3 **MAGISTRATE JUDGE SCHROEDER:** When is Mr. Arcara due
4 back in the district, do you know?

5 **MR. LYNCH:** I'm not sure, Judge. But Judge Arcara
6 requires a transcript so we're going to have to get a
7 transcript obtained.

8 **MAGISTRATE JUDGE SCHROEDER:** All right, I'm going to
9 grant that application.

10 **MR. BLOTHNIK:** One week stay?

11 **MAGISTRATE JUDGE SCHROEDER:** One week stay. So that
12 stay will be in effect until March the 2nd, 2020.

13 As to the defendant Rodney Pierce, I'm going to
14 release the defendant subject to the following terms and
15 conditions:

16 The defendant is to post bail security in the
17 amount of \$10,000 either cash or property having equal value
18 to that free and clear of any liens or incumbrances.

19 The defendant is hereby made subject to the
20 supervision and authority of the United States
21 Probation Office.

22 And what that means, Mr. Pierce, is you must obey
23 and carry out and follow through with every reasonable
24 directive given to you by a representative of that office.
25 Should you fail to do so, that can result in your bail being

1 revoked and your being locked up and kept locked up until this
2 matter is completed.

3 You are hereby required to surrender any passports
4 or passport cards, enhanced driver's licenses, or any other
5 form of documentation that enables one to travel
6 internationally.

7 And while this matter is pending you are not to
8 seek renewal of any passports or enhanced driver's licenses or
9 any other form of documentation that would allow for travel
10 internationally.

11 And you are not to apply for any new passports or
12 enhanced driver's licenses or any other form of documentation
13 that would allow for international travel.

14 Let me back up as to Mr. Burgin as well. I'm also
15 imposing for Mr. Burgin a prohibition, he is not to have
16 possession of or access to any firearms or destructive
17 devices.

18 And should he have such possession or access, he
19 must make that known to you, Mr. Blotnik, and I direct you as
20 an officer of the court to then confer with counsel for the
21 Government so that appropriate arrangements can be made for
22 the safekeeping of same.

23 As to the defendant Pierce, he is hereby prohibited
24 from possessing or having access to any firearms or dangerous
25 or destructive devices.

1 And if he does have such possession or access, he
2 must make that known to you, Mr. Covert, and I direct you as
3 an officer of the court to then confer with counsel for the
4 Government for the surrender and safekeeping of same while
5 this matter is pending.

6 The defendant Pierce is hereby prohibited from
7 having possession of or using any narcotic drug or substance,
8 even if it's considered legal under the laws of the United
9 States, unless that legal drug or substance is in the form of
10 medicine that has been prescribed for you personally by a duly
11 licensed physician licensed by the State of New York to treat
12 you personally for a medical condition.

13 So even though it might be considered a legal drug
14 or substance, you are not to have it in your possession and
15 you are not to use it unless it is in the form of medicine
16 prescribed for you by a doctor to treat you for a medical
17 condition.

18 Do you understand?

19 **DEFENDANT PIERCE:** Yes, Judge.

20 **MAGISTRATE JUDGE SCHROEDER:** You are hereby
21 prohibited, and needless to say, from having in your
22 possession or using any illegal drug or substance.

23 And you will be required to submit to drug and/or
24 alcohol testing and/or treatment for same as determined by the
25 U.S. Probation Office. And you will be required to contribute

1 towards the cost of that service in the form of a co-payment
2 the amount of which will be determined by the
3 U.S. Probation Office.

4 You are hereby prohibited from obstructing or
5 attempting to obstruct or tamper with in any fashion the
6 efficiency and accuracy of any substance testing that is
7 carried out.

8 You will also be required to report any contact you
9 have with any law enforcement personnel for any reason
10 whatsoever, be it something as minor as a vehicle and traffic
11 stop or for any other reason. And that report must be made
12 within 72 hours after the contact has occurred and it must be
13 made to the United States Probation Office.

14 You are not to have any contact either directly or
15 indirectly with the co-defendant in this case or with any
16 other defendant in a related case, such as the case involving
17 David Washington and the co-defendants in that case.

18 If there need to be such contact or information
19 acquired or investigation conducted, you must do that through
20 your attorney and your attorney Mr. Covert will then address
21 the matter as he deems appropriate.

22 You are hereby made subject to the supervision and
23 authority of the United States Probation Office, which means
24 you must obey and carry out and follow through with every
25 reasonable directive given to you by a representative of that

1 office.

2 Should you fail to do that, that can result in your
3 bail being revoked and your being locked up and kept locked up
4 until this matter is completed.

5 Do you understand?

6 **DEFENDANT PIERCE:** Yes, Judge.

7 **MAGISTRATE JUDGE SCHROEDER:** Further, should you
8 violate any one of the terms and conditions that I have
9 imposed here, that can also constitute a reason for revoking
10 your bail and having you locked up and kept locked up until
11 this matter is completed.

12 Do you understand?

13 **DEFENDANT PIERCE:** Yes, Judge.

14 **MS. LINTON:** Your Honor, if I may?

15 **MAGISTRATE JUDGE SCHROEDER:** Yes.

16 **MS. LINTON:** Given his two prior DWAI convictions
17 and current treatment for an alcohol disorder, I would ask
18 that he refrain from any use of alcohol.

19 **MAGISTRATE JUDGE SCHROEDER:** Yes, you are hereby
20 prohibited from drinking alcohol of any amount. That means no
21 drinking whatsoever.

22 And if you should be found to have engaged or
23 imbibed in alcohol, especially by way of the testing, that
24 will automatically result in your bail being revoked and your
25 being locked up and kept locked up.

1 Do you understand?

2 **DEFENDANT PIERCE:** Yes, Judge.

3 **MAGISTRATE JUDGE SCHROEDER:** I'm using zero
4 tolerance on the alcohol consumption and on the drug use.

5 Do you understand?

6 **DEFENDANT PIERCE:** Yes, Judge.

7 **MAGISTRATE JUDGE SCHROEDER:** Upon the posting of the
8 security in the amount of \$10,000 as I've indicated as well as
9 any additional processing by either the U.S. Marshal's Service
10 and/or the U.S. Probation Office, the defendant is -- also, if
11 you have a passport or any form of international travel
12 documents, they are to be surrendered immediately.

13 And then upon completion of that processing by the
14 U.S. Marshal's Service and/or the U.S. Probation Office, the
15 defendant Pierce upon the posting of the \$10,000 security is
16 to be released subject to all of the terms and conditions as I
17 have stated them to be.

18 **MR. LYNCH:** Nothing, Judge.

19 **MAGISTRATE JUDGE SCHROEDER:** Now, as to a
20 preliminary hearing, Mr. Covert and Mr. Blotnik --

21 **MR. BLOTNIK:** We waive a hearing.

22 **MAGISTRATE JUDGE SCHROEDER:** -- does the defendant
23 Burgin waive his right to a preliminary hearing?

24 **MR. BLOTNIK:** He does, Your Honor.

25 **MAGISTRATE JUDGE SCHROEDER:** Does the defendant

1 Pierce waive his right to a preliminary hearing?

2 **MR. COVERT:** He does, Your Honor.

3 **MAGISTRATE JUDGE SCHROEDER:** Thank you. There's
4 nothing further then jurisdictionally for this Court to do at
5 this time.

6 **MR. LYNCH:** Thank you, Judge.

7 **MR. BLOTHNIK:** Thank you, Your Honor.

8 **MAGISTRATE JUDGE SCHROEDER:** Thank you.

9 (**WHEREUPON**, proceedings adjourned at 4:32 p.m.)

10 * * *

11 **CERTIFICATE OF TRANSCRIBER**

12
13 In accordance with 28, U.S.C., 753(b), I certify that
14 this is a true and correct record of proceedings from the
15 official electronic sound recording of the proceedings in the
16 United States District Court for the Western District of New
17 York before the Honorable H. Kenneth Schroeder, Jr. on
18 February 24th, 2020.

19
20 S/ Christi A. Macri

21 Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)
Official Court Reporter

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